

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1709 OF 2007

Shri Nityanand Patil,
Director, Hand Made Paper Institute. ... Petitioner

V/s

The Employees Provident Fund
Organization & ors. ... Respondents

Mr. Kiran Bapat i/by M/s. Desai & Desai Associates for
the petitioner.

Mr. Suresh Kumar for the respondents.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 23RD JULY, 2007.

P.C.:

1. The petitioner challenges the order passed by the Regional Provident Fund Commissioner dated 28.2.2007 under Section 8B. The authority has issued a show cause notice as to why the warrant of arrest should not be issued against the petitioner who is a Director of the Hand Made Paper Institute.

2. A perusal of the Provident Fund Act indicates that before arresting a person under Section 8B(b), the Provident Fund authorities are required to comply with

the pre-conditions as stated in Section 8G. This section requires compliance of the procedure set out in the Second and Third Schedules to the Income Tax Act with necessary modifications. Under Rule 73 of Schedule II of the Income Tax Act, the defaulter is to be served with a notice calling upon him to show cause as to why he should not be committed to the civil prison. That order can be passed only when the Tax Recovery Officer, for reasons recorded in writing, is satisfied that the defaulter with the object or effect of obstructing the execution of the certificate has, after drawing up of the certificate by the Tax Recovery Officer, dishonestly transferred, concealed or removed any part of his property. The reasons must also state whether the defaulter has, since the drawing up of the certificate by the Tax Recovery Officer, the means to pay the arrears of some substantial part thereof and refuses or neglects to pay the same.

3. Thus, before a warrant of arrest is issued a show cause notice has to be issued by the Provident Fund authorities. After perusing the reply if they are satisfied that the defaulter has dishonestly transferred or concealed or removed any part of his property with the object of obstructing the execution of a certificate of recovery a warrant may be issued. In the present

case, it appears that the petitioner has approached this Court apprehending that the Regional Provident Fund Commissioner would issue a warrant of arrest and arrest the petitioner immediately.

4. It is made clear that the petitioner will be permitted to file an additional reply within two weeks from today before the Regional Provident Fund Commissioner, in reply to the show cause notice of 28.2.2007. The Provident Fund Commissioner will pass orders only after he is satisfied that there is need to issue a warrant of arrest and after taking into consideration the provisions of law and judgments as to whether it is necessary to first attach and sell the property and thereafter arrest the petitioner.

5. All the contentions of the Department as well as the petitioner are kept open, to be decided by the Provident Fund Commissioner before taking any action to arrest the petitioner.

6. Petition disposed of accordingly.

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